

MONTANA LEGISLATIVE HISTORY

Chapter 303 19

Bill H S 219 Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) 3-20 C

3-27 C

 C

 C

Date Out C

S. Committee on Judiciary

Hearing Date(s) 2-4 C

2-12 C

 C

 C

Did this bill originate in an interim committee? Yes No

Committee

Report

LEGISLATIVE HISTORIES SINCE 1997

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If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

	RETURNED TO SENATE WITH AMENDMENTS		
4/07	2ND READING AMENDMENTS CONCURRED	49	0
4/08	3RD READING CONCURRED AS AMENDED	49	1
4/14	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 302		
	EFFECTIVE DATE: 04/17/97		

SB 217 INTRODUCED BY KEATING, ET AL. LC1234 DRAFTER: STERNBERG

ESTABLISH THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AS THE
LEAD AGENCY FOR MANAGEMENT OF WILD BUFFALO OR BISON

1/24	INTRODUCED		
1/24	FIRST READING		
1/24	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/25	FISCAL NOTE REQUESTED		
1/31	HEARING		
1/31	FISCAL NOTE RECEIVED		
1/31	FISCAL NOTE PRINTED		
2/19	TABLED IN COMMITTEE		
4/05	MISSED DEADLINE FOR 71ST DAY TRANSMITTAL		
	DIED IN COMMITTEE		

SB 218 INTRODUCED BY BURNETT LC1354 DRAFTER: STERNBERG

ELIMINATE THE STATE MEAT AND POULTRY INSPECTION PROGRAM

1/24	INTRODUCED		
1/24	FIRST READING		
1/24	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/25	FISCAL NOTE REQUESTED		
1/29	HEARING		
1/30	FISCAL NOTE RECEIVED		
1/30	FISCAL NOTE PRINTED		
1/31	TABLED IN COMMITTEE		
3/03	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL		
	DIED IN COMMITTEE		

SB 219 INTRODUCED BY FRANKLIN, ET AL. LC0114 DRAFTER: MACMASTER

CREATE THE CRIMINAL OFFENSE OF SURREPTITIOUS VISUAL
OBSERVATION OR RECORDATION IN A PLACE OF RESIDENCE

1/24	INTRODUCED		
1/24	FIRST READING		
1/24	REFERRED TO JUDICIARY		
1/25	FISCAL NOTE REQUESTED		
1/31	FISCAL NOTE RECEIVED		
1/31	FISCAL NOTE PRINTED		
2/04	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	30	19
2/19	3RD READING PASSED	34	16
	TRANSMITTED TO HOUSE		
2/22	FIRST READING		
2/22	REFERRED TO JUDICIARY		
3/20	HEARING		
4/02	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/03	2ND READING CONCURRED	85	14
4/04	3RD READING CONCURRED	83	15

	RETURNED TO SENATE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	50	0
4/09	3RD READING CONCURRED AS AMENDED	45	5
4/14	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 303		
	EFFECTIVE DATE: 04/17/97		

SB 220 INTRODUCED BY SWYSGOOD, ET AL. LC0464 DRAFTER: NISS
 PROVIDE FOR THE MONTANA CONSENSUS COUNCIL

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO STATE ADMINISTRATION		
1/27	FISCAL NOTE REQUESTED		
1/30	FISCAL NOTE RECEIVED		
1/30	FISCAL NOTE PRINTED		
2/06	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	32	13
2/19	3RD READING PASSED	35	15
	TRANSMITTED TO HOUSE		
2/22	FIRST READING		
2/22	REFERRED TO STATE ADMINISTRATION		
3/06	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/22	2ND READING CONCURRED	49	48
3/24	3RD READING FAILED	49	50

SB 221 INTRODUCED BY HERTEL LC0697 DRAFTER: KURTZ
 REVISE COUNTY ROAD LAWS

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO LOCAL GOVERNMENT		
1/27	FISCAL NOTE REQUESTED		
2/01	FISCAL NOTE RECEIVED		
2/01	FISCAL NOTE PRINTED		
2/06	HEARING		
2/11	TABLED IN COMMITTEE		
3/03	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL		
	DIED IN COMMITTEE		

SB 222 INTRODUCED BY GLASER, ET AL. LC0300 DRAFTER: MACMASTER
 CRIMINALIZE THE INGESTION OF A DANGEROUS DRUG

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO JUDICIARY		
1/29	FISCAL NOTE REQUESTED		
2/03	HEARING		
2/05	FISCAL NOTE RECEIVED		
2/05	FISCAL NOTE PRINTED		
2/06	COMMITTEE REPORT—BILL PASSED		
2/08	2ND READING PASSED	47	0
2/10	3RD READING PASSED	45	4
	TRANSMITTED TO HOUSE		
2/11	FIRST READING		

SENATE JUDICIARY

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- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

SB0201	1/20	1/29	TABLED ON 01/30	VOTE:		
SB0202	GLASER, BILL	1/20	1/29	DEATH PENALTY FOR 2ND CONVICTION OF CERTAIN DRUG OFFENSES	TABLED ON 01/30	VOTE:
SB0205	MCNUTT, WALTER	1/21	1/30	ALLOW TRUTH AS AN ABSOLUTE DEFENSE IN CRIMINAL DEFAMATION	DO PASS	VOTE: 10-0 1-30 1/30
SB0210	COLE, MACK	1/22	2/03	CRIMINALIZE REFUSAL TO TAKE DUI TESTS	TABLED ON 02/05	VOTE:7-3
SB0212	MCNUTT, WALTER	1/22	1/30	REQUIRE JURY AWARD OF PUNITIVE DAMAGES TO BE UNANIMOUS AS TO LIABILITY & AMT	PASS AS AMENDED	VOTE: 10-0 2-6 2/08
SB0215	ECK, DOROTHY	1/24	2/06	MOBILE HOME EQUITY PROTECTION ACT	PASS AS AMENDED	VOTE: 9-1 2-12 2/14
SB0216	VAN VALKENBURG, FRED	1/24	2/04	REVISE POSTCONVICTION RELIEF	PASS AS AMENDED	VOTE: 10-0 2-4 2/05
SB0219	FRANKLIN, EVE	1/24	2/04	CREATING "PEEPING TOM" CRIMINAL OFFENSE	PASS AS AMENDED	VOTE: 8-2 2-12 2/14
SB0222	GLASER, BILL	1/25	2/03	REVISE DANGEROUS DRUG AND DUI LAWS	DO PASS	VOTE:6-4 2-5 2/06
SB0227	DOHERTY, STEVE	1/27	2/06	LIMIT RENT INCREASE ON SPACE IN MOBILE HOME PARK	TABLED ON 02/12	VOTE: 6-4
SB0230	THOMAS, FRED	1/27	2/03	DISCIPLINE OF MEDICAL PROFESSIONAL ASSISTING IN A SUICIDE	TABLED ON 02/14	VOTE:6-4
SB0231	EMERSON, C. A.	1/27	2/05	REFERENDUM FOR CONSTIT. AMENDMENT - CONTROL OF THE JUDICIARY	TABLED ON 02/17	VOTE:9-1
	BENEDICT, STEVE			ESTABLISH ACCOUNTANT STATUTE OF LIMITATIONS		

1
2 INTRODUCTION BY Senate BILL NO. 219
3 Spencer Thuer

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE CRIMINAL OFFENSE OF SURREPTITIOUS
5 VISUAL OBSERVATION OR RECORDATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8
9 **NEW SECTION. Section 1. Surreptitious visual observation or recordation.** (1) A person commits
10 the offense of surreptitious visual observation or recordation if a person purposely or knowingly:

11 (a) hides, waits, or otherwise loiters in the vicinity of a private dwelling house, apartment, or other
12 place of residence for the purpose of watching, gazing at, or looking upon any occupant in the residence
13 in a surreptitious manner; or

14 (b) by means of an electronic or mechanical recording device, surreptitiously records the visual
15 image of a person in a public or private place in which the recorded person has a reasonable expectation
16 of privacy.

17 (2) A person convicted of the offense of surreptitious visual observation or recordation shall be
18 fined an amount not to exceed \$500 or be incarcerated in the county jail for a term not to exceed 6
19 months, or both. Upon a second conviction, a person shall be fined an amount not to exceed \$1,000 or
20 be incarcerated for a term not to exceed 1 year, or both. Upon a third or subsequent conviction, a person
21 shall be fined an amount not to exceed \$10,000 or be incarcerated for a term not to exceed 5 years, or
22 both.

23
24 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an
25 integral part of Title 45, chapter 8, part 2, and the provisions of Title 45 apply to [section 1].

26
27 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

28 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0219, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating the criminal offense of surreptitious visual observation or recordation.

FISCAL IMPACT:

There is no fiscal impact to the state.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

There could be a fiscal impact to the counties depending upon the number of convictions and if the sentence includes incarceration in the county jail and the length of that sentence.

David Lewis 1-30-97
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Eve Franklin 1/31/97
EVE FRANKLIN, PRIMARY SPONSOR DATE

Fiscal Note for SB0219, as introduced

SB 219

HEARING ON SB 219

Sponsor: SEN. EVE FRANKLIN, SD 21, GREAT FALLS

Proponents:

- John Connor, Department of Justice and Montana County Attorneys Association
- Tim Shanks, Montana Police Protective Assoc.
- Mike McGrath, Montana County Attorneys Assoc.
- Becky Malensek

Opponents:

- Lawrence Hubbard, Legal Counsel for State Compensation Insurance Fund
- Martin T. Mangon, Montana Private Investigators and Security Operatives Assoc.
- Greg Van Horssen, State Farm Insurance
- Ron Mackey, Ron Mackey Investigations
- Rick Hawk, Private Investigator
- Michael Day, Private Investigator

Opening Statement by Sponsor:

SEN. EVE FRANKLIN, SD 21, GREAT FALLS, explained that this bill deals with a serious intrusion to another person's private and personal life and space. The behavior known as "peeping tom" in SB 219 is referred to as surreptitious visualizations. This is sometimes a precursor to other more aggressive crimes. This act is codified in a portion of law entitled "Offense Against a Person", Title 45.

Our laws recognize that there are certain acts which pose significant danger to individuals such as stalking, indecent exposure, and malicious intimidation. However, nothing in current statute covers the behavior called surreptitious visualization. This will allow law enforcement to prosecute individuals engaged in this conduct.

The Great Falls Police Detective Unit did a tremendous amount of independent research on this matter. They collected current statute from Utah, Arizona, California, and South Dakota. All these states have laws which are working.

In Section 1 (2) there is the issue of recordation. In Helena a young women, who had not given consent, was videorecorded in a dressing room by an adult male business person who had other designs for the videotapes.

REP. CHRIS AHNER has presented a bill in House Judiciary which deals with this issue. She asked REP. AHNER to co-sponsor this bill so these two pieces of legislation could be coordinated. SB 219 is a little broader in scope. This bill creates a graduated offense from misdemeanor to a felony on third instance. There is no fiscal impact on the state. Private investigators have some concern about this bill. She would be supportive of the two amendments which will be presented today. One by the Fraud Unit

of the State Fund and also one by John Connor. Both amendments provide an exception for legitimate investigative purposes which includes law enforcement and private investigators.

Proponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 9:33; Comments: .}

John Connor, Department of Justice and Montana County Attorneys Association, appeared in support of SB 219. In the '91 Session there was a bill known as the "peeping tom" bill which did not pass. They changed the terminology to address a serious problem of every law enforcement agency on a local level. There is no statutory scheme designed to address situations where people engage in this activity. Criminal trespass or disorderly conduct are hard to prove.

This bill will allow local law enforcement to tag the person with the offense they actually are committing. People who engage in this type of offense often become progressively more predatory. When a records check is done on someone for sexual intercourse without consent or sexual assault, if they had a conviction for what is contained in this bill, they might be able to get a search warrant of that person's property to obtain information to support prosecution for the more serious sex offense.

The amendment he submitted to the committee (**EXHIBIT 3**) incorporates State Fund's language and also covers licensed private investigators.

Tim Shanks, Montana Police Protective Association, presented his written testimony in support of SB 219. (**EXHIBIT 4**) He commented this would not apply to the person sitting at the corner bus stop watching people go by. He was involved in an investigation in Great Falls where the individual started this activity at fifteen years of age. By the time this individual was caught, he had already visited nine or ten houses that evening. There is a diary of hundreds of names and asterisks by those names and addresses. He assumes that these are places which he had frequented in the past.

Mike McGrath, Montana County Attorneys' Association, spoke in support of SB 219. In Helena a few years ago there was a situation with a man who ran a record store in the mall. He sponsored a number of contests alleged to be modeling contests. He would persuade young girls to audition for these modeling contests. They were required to change clothing. When they were changing, he had his electronic surveillance camera set up to watch them. Eventually he was apprehended. He took a fifteen year old girl to his home and sexually assaulted her. The search warrant for his home resulted in these videotapes being discovered. There is no legislation to cover this particular set of facts. They were able to charge the sexual assault case.

Becky Malensek stated that in 1980 there was a person peeking in her windows. The police talked to this person and he told them that he was looking in the window because there was a guy reading a story to a little girl and he thought he was molesting her. One month later this person was arrested for raping a little girl and was sentenced to forty years. He was released two and a half years ago.

She fears this person will still come by and look in her windows. Had this person been looking in windows before and this little eight year old girl had to pay for it? Her daughter was the person videotaped. People need to be made responsible for their crimes. Her daughter has suffered for five years. It is hard for her. She has learned not to trust people.

Opponents' Testimony:

{Tape: 1; Side: b; Approx. Time Count: 9:47; Comments: .}

Lawrence Hubbard, Legal Counsel for State Compensation Insurance Fund, appeared as a conditional opponent. State Fund would support the bill with the amendments drafted by **Mr. Connor**. State Fund, in 1993, was reposed with the authority, by the legislature, to investigate, protect and prosecute Workers' Compensation fraud. As part of that effort, State Fund has a Workers' Compensation Fraud Unit. Over the last three years, the State Fund has realized savings of approximately \$3 million by the direct use of private investigators.

Martin T. Mangon, Montana Private Investigators and Security Operatives' Assoc., stated that as a private investigator surveillance is very significant to develop information to save individuals and corporations money and also to prosecute individuals involved in fraud or other criminal activities. He would be in favor of the bill with the proposed amendments.

Greg Van Horssen, State Farm Insurance, rose as a conditional opponent. He passed out amendments. (EXHIBIT 5) He believes these amendments reflect the amendments submitted by the Department of Justice. State Farm was concerned about a prohibition against legitimate insurance investigation. State Farm had a strong hand in drafting the fraud bill in 1995 which has had a significant impact on the amount of insurance fraud perpetrated against state and private insurance companies. State Farm and the American Insurance Association would support this bill with the proposed amendments.

Ron Mackey, Ron Mackey Investigations, stated initially he was opposed to the bill, but would be willing to support the bill with the proposed amendments. They use videotape exclusively for recording person's activities away from their home. They have a large investment in equipment for their business.

Rick Hawk, Private Investigator, stated he was opposed to this bill initially but would support the bill with the amendments which would allow legitimate investigations for private investigators and law enforcement officers.

Michael Day, Private Investigator, stated he would support the bill with the proposed amendments.

Questions From Committee Members and Responses:

{Tape: 1; Side: b; Approx. Time Count: 9:57; Comments: .}

SEN. LORENTS GROSFIELD asked if "place of residence" included a motel?

Mr. Connor felt the language intended to include a motel.

SEN. GROSFIELD, referring to the amendment, "or to any person engaged in fraud detection . . . while the person is acting in an official capacity", asked if the word "person" applied to private investigator or law enforcement officer?

Mr. Connor explained the term person was referencing investigators.

SEN. GROSFIELD was concerned about the language in the bill which read "hides, waits, or otherwise loiters in the vicinity". There was no mention of length of time. A teenage son or daughter who is grounded may have friends outside waiting for them to come out. This could have some unintended consequences. Why wouldn't the stalking law cover this?

Mr. Connor stated the stalking law has elements which require a longer pattern of behavior than the peeking tom situation. All of the elements of the events have to be read in total and be proven beyond a reasonable doubt. The state would have to prove that one hid or waited or loitered and then take into consideration the place where it occurred. The third element would be to prove that the loitering, hiding, or waiting was for the purpose of looking at or gazing upon an occupant in a residence in a surreptitious manner.

SEN. DOHERTY posed the scenario of a photographer following John Kennedy, Jr. around Montana. He took his picture in a place in which the person had a reasonable expectation of privacy. He saw him eating dinner in the restaurant in Big Sky. Wouldn't this bill make the photographer a criminal?

Mr. Connor stated the reasonable expectation issue is what is important. A reasonable expectation of privacy would be the privacy upon which one relies in conducting his or her daily affairs. Being in a restaurant does not give one a reasonable expectation of privacy.

SEN. DOHERTY commented that as an attorney he may not want to hire a private investigator. He would send his secretary. As a suspicious spouse, he might follow his spouse to the motel so that he could get pictures to confront that individual at a later time. If he is rich, he would hire an investigator. If he is poor, and acted in the same manner as the investigator, is he guilty of this crime?

Mr. Connor stated that he may be. He is not sure that the individual described has a right to be doing what they were doing. It is not their intent to make this apply to those situations in which one might be engaged in a legitimate investigation. They would be willing to broaden the language in the amendment to do so.

SEN. DOHERTY stated there would be disreputable attorneys who have disreputable staff members who would investigate. Where is the line drawn?

Mr. Connor answered that if a person is in a private dwelling house, the people intent upon peering at that person in a private dwelling house in a surreptitious manner, would provide probable cause to believe that that offense had been committed. What is and is not legitimate is the issue which is left to the investigating agency, the law enforcement agency, or the prosecutor in each instance.

SEN. SHARON ESTRADA asked to be provided with a copy of the statutes of the states mentioned in earlier testimony.

Mr. Shanks replied he would provide the committee with that information.

SEN. SUE BARTLETT asked if the amendment, in addition to addressing the Workers' Compensation Fraud Unit, would include insurance investigation in general?

Mr. Connor stated the first statute referred to in the proposed amendment was the statute which relates to the licensing of private investigators in general. The second and third statute relate to the State Fund Fraud Investigation Program. He stated that **Mr. Van Horssen** felt this would cover the situations in which they employed investigators. There was a question about whether the investigator needed to be licensed. It is the position of the investigators that they ought to be, otherwise they are not making lawful investigations.

SEN. HALLIGAN did not want every insurance agent to be allowed to take pictures of people. He wanted this tied to law enforcement and private security people who are licensed in the state of Montana.

CHAIRMAN CRIPPEN asked if insurance personnel had to be licensed to investigate?

SEN. HOLDEN stated they did not.

SEN. GROSFIELD was concerned with the loose language of "watch, look at or gaze upon."

Mr. Connor stated that there was the prerequisite two mental states in line 10 and the purpose requirement in line 12. The first part of the statute (1)(a) and (b) come from a different state. He could get some case law statutes from that state.

Closing by Sponsor:

{Tape: 1; Side: b; Approx. Time Count: 10:15; Comments: .}

SEN. FRANKLIN commented there was no intent in the bill to limit lawful investigation or police work. She would want to make sure they were not limiting legitimate activities. They have made a decision that private investigative work is sensitive enough that they may need to have a level of training and professional ethics which go along with that occupation.

HEARING ON SB 247

Sponsor: SEN. KEN MESAROS, SD 25, CASCADE

Proponents:

- Tracey Mikes, Rancher
- John Strandell, Undersheriff of Cascade County
- John Youngberg, Montana Farm Bureau
- Candace Torgeson
- John Lindquist, Montana Stockgrowers Association
- Jim Richard, Montana Wildlife Federation
- Jim Richard, Montana Wildlife Federation
- Rick Seidlitz, Sheriff of Meagher County
- Mark Bridges, Administrator of the Department of Livestock Enforcement Division
- Walter H. Savoy, Rancher

Opponents: None

Opening Statement by Sponsor:

{Tape: 1; Side: b; Approx. Time Count: 10:17; Comments: .}

SEN. KEN MESAROS, SD 25, CASCADE, introduced SB 247. This bill targets recreational users who are convicted of damaging or destroying property, public or private, in that they are held liable for the restitution of the market value. This bill evolved from frustration of law enforcement officers trying to do their job and property owners frustrations of being forced to file civil lawsuits to recapture their loss resulting from other person's actions.

The criminal mischief statute is often pursued but intent, knowingly and purposely, must be present. He passed out a

scams. SEN. SHEA said "even one scam is too many". It is far worse to be scammed by the government than by crooks.

This problem is far-reaching. Last session a lawyer said he'd get this declared unconstitutional if it passes. That happened in the Senate Judiciary Committee. Five minutes after the Committee recessed, this attorney apologized over and over again. I investigated this on tapes and in the minutes last summer, but it was gone from the tapes in both the House and the Senate. It is time for the Legislature to take its rightful place and get on with its work. The Legislature is the only group where we can use impeachment powers. I ask you to pass this bill, and appreciate this hearing.

EXECUTIVE ACTION ON HB 200

Amendments: Valencia Lane. The amendment requested by SEN. FRANKLIN affects Subsection (b) of SB 219, with no changes to HB 200. This way they can both pass without conflicting. The Code Commission asked me to include a coordination instruction to put both of them together into one section of the Code, if they are both passed and approved (page 2 of the amendment). I thought it better to have similar criminal sanctions in Subsection (4) of SB 219 and Subsection (4)(b) of HB 200. So you are incorporating HB 200 into SB 219.

Motion/Vote: SEN. ESTRADA MOVED HB 200 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 219

Discussion: VICE CHAIRMAN LORENTS GROSFIELD. I do not understand the amendment. Valencia Lane. Both sponsors wanted their bills to pass, to stand alone.

Motion: SEN. BARTLETT MOVED TO ADOPT AMENDMENTS sb021901.av1. - EXHIBIT 10.

Substitute Motion: SEN. RIC HOLDEN MOVED TO AMEND SECTION 1, (4)(A) TO MAKE IT CONSISTENT WITH HB 200, "\$15,000 AND NOT TO EXCEED TWO YEARS".

Discussion: Valencia Lane. If they're going to be identical we don't need subsection (a) and (b), we only need one. SEN. HOLDEN. We need to simplify this for law enforcement.

Vote: SEN. HOLDEN'S SUBSTITUTE MOTION FAILED WITH SEN.S ESTRADA JABS, MCNUTT, BARTLETT AND DOHERTY VOTING NO.

Motion: SEN. BARTLETT MOVED SB 219 DO PASS AS AMENDED.

Discussion: VICE CHAIRMAN GROSFIELD. I'm troubled by how general the language is concerning "loitering" and "the vicinity . . ." Could this be used in a threatening manner by some

parents, in ways other than intended? I believe the video-taping and peeping-tom part are fine.

SEN. HOLDEN. What is your impression of a news reporter taking a new picture? SEN. BARTLETT. That was addressed in the amendment, by striking lines 15-16, and inserting "any person within the residence".

SEN. HOLDEN. I don't support such behavior, but I do see SEN. GROSFIELD's concerns.

SEN. DOHERTY. With a telephoto lens, a camera could be a long way off. I believe language limits it to within the residence.

Vote: SEN. BARTLETT'S MOTION THAT SB 219 DO PASS AS AMENDED CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN. GROSFIELD AND SEN. HOLDEN WHO VOTED NO.

EXECUTIVE ACTION ON SB 250

Discussion: CHAIRMAN CRIPPEN. I talked to the Chief Justice about a study resolution since this is such a change in the system.

Motion/Vote: VICE CHAIRMAN GROSFIELD MOVED SB 250 BE TABLED. THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 283

Amendments: sb028301.avl - EXHIBIT 11

Motion: VICE CHAIRMAN LORENTS GROSFIELD MOVED TO ADOPT AMENDMENTS sb028301.avl.

Discussion: Valencia Lane. The amendment says "if parents are available", and so removes the reference that parents must appear in person before the Court, but at least must submit a written statement.

Vote: VICE CHAIRMAN GROSFIELD'S MOTION TO ADOPT THE AMENDMENTS TO SB 283 CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN. BISHOP WHO VOTED NO.

Motion/Vote: SEN. ESTRADA MOVED SB 283 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.

CHAIRMAN CRIPPEN. Tomorrow's hearing will be interesting, as we are hearing the appointment of a judge. SEN. DOHERTY will present the resolution, then we will hear testimony for and against the appointment, as well as have questions from the Committee. There will be a little lunch following the hearing, sponsored by the Montana Defense Trial Lawyers and the Montana Trial Lawyers Association.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 2/4/97

REF NO. SB 219

1/4/97

SB 219

Amendments to Senate Bill 219
Introduced Bill

Prepared by John Connor
Department of Justice
February 4, 1997

1. Title, line 5.
Following: "RECORDATION;"
Insert: "PROVIDING AN EXCEPTION FOR LEGITIMATE INVESTIGATIVE PURPOSES;"
2. Page 1, line 23:
Following: Section 1
Insert:

"Section 2. Exception. [Section 1] does not apply to a law enforcement officer, or to a private investigator licensed pursuant to 37-60-301, or to any person engaged in fraud detection, prevention or prosecution pursuant to 39-71-211, or 2-15-2015, while the person is acting in an official capacity for legitimate investigative purposes."

Renumber: remaining sections.



Montana Police Protective Assn
To Serve and Protect
Since 1930

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 2/4/97
ASSN NO. SB219

February 4, 1997

Senate Judiciary Committee
Sen Bruce Crippen
Chairman

Sen Crippen and members of the committee,

My name is Tim Shanks and I represent the Montana Police Protective Association. The MPPA supports SB219 because there is a need for this type of legislation.

I found a need for this legislation when I was faced with investigating peeping tom activity and not having a specific statute to charge. I requested assistance from Cascade County Attorneys' office in researching statutes that may apply. Criminal trespass to property does not meet the statutory intent. At best disorderly conduct can be used.

I began to research peeping tom statutes in January of 1996 with the assistance of the Attorney General's office and Board of Crime Control. Additionally I contacted individuals in surrounding states and nationwide. Many states have some form of peeping tom statutes or city ordinances' making this activity a crime. Some states call it voyeurism.

I received information from several states including California, Arizona, Utah, So. Dakota, Oklahoma, Delaware, Georgia, Indiana, Louisiana, Mississippi, Ohio and So Carolina. Unfortunately some states never returned by inquiries. I did contact some states and found they did not have a statue dealing with peeping toms'. Oregon, No Dakota, Washington to name a few.

Not all peeping toms are detected but this legislation would apply to those who are detected, caught and arrested. Peeping toms' can be a progressive stage too more serious crimes such as fondling, rape or worse.

Look at the definitions of SURREPTITIOUS: secretive, stealthy, acting in secret, stealthy way. STEALTH: a way of taking action designed to escape notice.

Please protect your family, my family and the citizens of the State of Montana from becoming victims of a peeping tom.

Support SB 219 Thank you.

Tim Shanks
Legislative Chairman
MPPA

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 2/4/97
BILL NO. SB 219

Amendments Proposed by State Farm Insurance Company
Senate Bill 219
Introduced Bill Copy
February 4, 1997

1. Page 1, line 10.

After "person" insert "other than an insurer, the agent of an insurer, or a private investigator acting within the course and scope of an investigation"

HOUSE JUDICIARY

Page 10

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

SB0205	MCNUTT, WALTER	2/07	3/11	ALLOW TRUTH AS AN ABSOLUTE DEFENSE IN CRIMINAL DEFAMATION	CONCUR	03/11	VOTE: 15-0	3/11
SB0212	MCNUTT, WALTER	2/13	3/05	REQUIRE JURY AWARD OF PUNITIVE DAMAGES TO BE UNANIMOUS AS TO LIABILITY & AMT	CONCUR AS AMENDED	03/06	VOTE: 9-8	3/07
SB0216	VAN VALKENBURG, FRED	2/11	3/14	REVISE POSTCONVICTION RELIEF	CONCUR AS AMENDED	03/14	VOTE: 10-8	3/14
SB0219	FRANKLIN, EVE	2/22	3/20	CREATING "PEEPING TOM" CRIMINAL OFFENSE	CONCUR AS AMENDED	03/27	VOTE: 15-3	4/02
SB0222	GLASER, BILL	2/11		REVISE DANGEROUS DRUG AND DUI LAWS			VOTE: 2/14/97	
SB0232	BENEDICT, STEVE	2/13	3/14	ESTABLISH ACCOUNTANT STATUTE OF LIMITATIONS	CONCUR	03/14	VOTE: 14-4	3/14
SB0263	BISHOP, AL	2/21	3/20	GENERALLY REVISE ESTATE, TRUST, AND FIDUCIARY LAWS	CONCUR AS AMENDED	03/27	VOTE: 19-0	4/02
SB0270	BENEDICT, STEVE	3/03	3/20	CLARIFY AND EXPAND LAWS GOVERNING INSURANCE AND SECURITIES FRAUD	CONCUR AS AMENDED	03/24	VOTE: 16-0	3/25
SB0277	BARTLETT, SUE	2/13	3/14	REVISE DISTRICT COURT SMALL CLAIMS PROCEDURE	CONCUR	03/14	VOTE: 16-0	3/14
SB0283	BURNETT, JIM	2/21	3/21	CHILD ABUSE/NEGLECT PROC. REQUIRE PARENT INPUT BEFORE TIA ISSUED	CONCUR AS AMENDED	03/27	VOTE: 10-7	4/03
SB0289	ECK, DOROTHY	2/21	3/25	CRIMINAL SURCHARGE TO FUND VICTIM/WITNESS ASSISTANCE PROGRAMS	TABLED ON	03/27	VOTE: 17-3	
SB0308	BECK, TOM	3/03	3/21	ENACT GOVERNMENT ACCOUNTABILITY ACT	CONCUR	03/25	VOTE: 13-7	3/26

SENATE BILL NO. 219

INTRODUCED BY FRANKLIN, AHNER, RYAN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE CRIMINAL OFFENSE OF SURREPTITIOUS VISUAL OBSERVATION OR RECORDATION IN A PLACE OF RESIDENCE; PROVIDING AN EXCEPTION FOR LEGITIMATE INVESTIGATIVE PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Surreptitious visual observation or recordation IN A PLACE OF RESIDENCE -- EXCEPTIONS.** (1) A person commits the offense of surreptitious visual observation or recordation if a person purposely or knowingly:

~~(a)~~ hides, waits, or otherwise loiters in the vicinity of a private dwelling house, apartment, or other place of residence for the purpose of:

(A) watching, gazing at, or looking upon any occupant in the residence in a surreptitious manner; or

(b) by means of an electronic or mechanical recording device, surreptitiously ~~records~~ RECORDING the visual image of ~~a person in a public or private place in which the recorded person has a reasonable expectation of privacy~~ ANY OCCUPANT IN THE RESIDENCE.

(2) SUBSECTION (1) DOES NOT APPLY TO A LAW ENFORCEMENT OFFICER, AN AGENT OR EMPLOYEE OF AN INSURER, OR A PRIVATE INVESTIGATOR LICENSED PURSUANT TO 37-60-301 OR TO ANY PERSON ENGAGED IN FRAUD DETECTION, PREVENTION, OR PROSECUTION PURSUANT TO 2-15-2015 OR 39-71-211, WHILE THE OFFICER, AGENT, EMPLOYEE, OR PRIVATE INVESTIGATOR IS ACTING IN AN OFFICIAL CAPACITY FOR LEGITIMATE INVESTIGATIVE PURPOSES.

~~(2)(3)~~ A person convicted of the offense of surreptitious visual observation or recordation shall be fined an amount not to exceed \$500 or be incarcerated in the county jail for a term not to exceed 6 months, or both. Upon a second conviction, a person shall be fined an amount not to exceed \$1,000 or be incarcerated for a term not to exceed 1 year, or both. Upon a third or subsequent conviction, a person shall be fined an amount not to exceed \$10,000 or be incarcerated for a term not to exceed 5 years, or both.

1 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an
2 integral part of Title 45, chapter 8 5, part 2, and the provisions of Title 45 apply to [section 1].

3
4 NEW SECTION. SECTION 3. COORDINATION INSTRUCTION. IF BOTH [THIS ACT] AND HOUSE
5 BILL NO. 200 ARE PASSED AND APPROVED AND IF HOUSE BILL NO. 200 INCLUDES A SECTION
6 CRIMINALIZING THE SURREPTITIOUS TAKING OF A PERSON'S PICTURE IN CERTAIN ROOMS IN A
7 BUSINESS ESTABLISHMENT, THEN HOUSE BILL NO. 200 AND [SECTION 1 OF THIS ACT] MUST BE
8 CODIFIED TOGETHER IN TITLE 45, CHAPTER 5, AND THE COMBINED SECTION MUST READ:

9 "NEW SECTION. SECTION 1. SURREPTITIOUS VISUAL OBSERVATION OR RECORDATION --
10 PLACE OF RESIDENCE -- PUBLIC ESTABLISHMENT -- EXCEPTIONS. (1) A PERSON COMMITS THE
11 OFFENSE OF SURREPTITIOUS VISUAL OBSERVATION OR RECORDATION IN A PLACE OF RESIDENCE IF
12 A PERSON PURPOSELY OR KNOWINGLY HIDES, WAITS, OR OTHERWISE LOITERS IN THE VICINITY OF
13 A PRIVATE DWELLING HOUSE, APARTMENT, OR OTHER PLACE OF RESIDENCE FOR THE PURPOSE OF:

14 (A) WATCHING, GAZING AT, OR LOOKING UPON ANY OCCUPANT IN THE RESIDENCE IN A
15 SURREPTITIOUS MANNER; OR

16 (B) BY MEANS OF AN ELECTRONIC OR MECHANICAL RECORDING DEVICE, SURREPTITIOUSLY
17 RECORDING THE VISUAL IMAGE OF ANY OCCUPANT IN THE RESIDENCE.

18 (2) AN OWNER, MANAGER, OR EMPLOYEE OF A BUSINESS OR A LANDLORD WHO KNOWINGLY
19 SURREPTITIOUSLY RECORDS A VISUAL IMAGE OF A PERSON IN A RESTROOM, WASHROOM, SHOWER,
20 BEDROOM, FITTING ROOM, OR OTHER ROOM USED BY A CUSTOMER, GUEST, TENANT, OR MEMBER
21 OF THE PUBLIC TO, WITH A REASONABLE EXPECTATION OF PRIVACY, CHANGE OR TRY ON CLOTHES,
22 BATHE, PERFORM INTIMATE BODILY FUNCTIONS, OR APPEAR NUDE OR PARTIALLY NUDE OR IN
23 UNDERCLOTHES COMMITS THE OFFENSE OF SURREPTITIOUS VISUAL RECORDATION IN A PUBLIC
24 ESTABLISHMENT.

25 (3) SUBSECTIONS (1) AND (2) DO NOT APPLY TO A LAW ENFORCEMENT OFFICER, AN AGENT
26 OR EMPLOYEE OF AN INSURER, OR A PRIVATE INVESTIGATOR LICENSED PURSUANT TO 37-60-301 OR
27 TO ANY PERSON ENGAGED IN FRAUD DETECTION, PREVENTION, OR PROSECUTION PURSUANT TO
28 2-15-2015 OR 39-71-211 WHILE THE OFFICER, AGENT, EMPLOYEE, OR PRIVATE INVESTIGATOR IS
29 ACTING IN AN OFFICIAL CAPACITY FOR LEGITIMATE INVESTIGATIVE PURPOSES.

30 (4) (A) A PERSON CONVICTED OF THE OFFENSE OF SURREPTITIOUS VISUAL OBSERVATION OR

1 RECORDATION IN A PLACE OF RESIDENCE SHALL BE FINED AN AMOUNT NOT TO EXCEED \$500 OR BE
2 INCARCERATED IN THE COUNTY JAIL FOR A TERM NOT TO EXCEED 6 MONTHS, OR BOTH. UPON A
3 SECOND CONVICTION, A PERSON SHALL BE FINED AN AMOUNT NOT TO EXCEED \$1,000 OR BE
4 INCARCERATED FOR A TERM NOT TO EXCEED 1 YEAR, OR BOTH. UPON A THIRD OR SUBSEQUENT
5 CONVICTION, A PERSON SHALL BE FINED AN AMOUNT NOT TO EXCEED \$10,000 OR BE
6 INCARCERATED FOR A TERM NOT TO EXCEED 5 YEARS, OR BOTH.

7 (B) A PERSON CONVICTED OF THE OFFENSE OF SURREPTITIOUS VISUAL RECORDATION IN A
8 PUBLIC ESTABLISHMENT SHALL BE FINED AN AMOUNT NOT TO EXCEED \$1,000 OR INCARCERATED
9 FOR A TERM NOT TO EXCEED 6 MONTHS, OR BOTH, IF THE VICTIM WAS AN ADULT AND SHALL BE
10 FINED AN AMOUNT NOT TO EXCEED \$5,000 OR INCARCERATED FOR A TERM NOT TO EXCEED 2
11 YEARS, OR BOTH, IF THE VICTIM WAS A MINOR."

12
13 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

14 -END-

Proponents' Testimony:

TOM HOPGOOD, Health Insurance Association of America
{Tape: 1; Side: A; Approx. Time Count: 4.0}

GREG VanHORSSEN, State Farm Insurance
{Tape: 1; Side: A; Approx. Time Count: 4.1}

EXHIBIT 1

VERNER BERTELSEN, Montana Senior Citizens' Association
{Tape: 1; Side: A; Approx. Time Count: 4.7}

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Count: 5.8-18.2}

Closing by Sponsor: SEN. BENEDICT

{Tape: 1; Side: A; Approx. Time Count: 18.3}

Proponents' Testimony:

SUSAN GOOD, Montana Life Underwriters' Association
{Tape: 1; Side: A; Approx. Time Count: 20.1; Comments: This
proponent arrived late and was allowed to testify as a proponent
for SB 270.}

HEARING ON SB 219

Opening Statement by Sponsor: SEN. EVE FRANKLIN
{Tape: 1; Side: A; Approx. Time Count: 21.0}

EXHIBIT 2

Proponents' Testimony:

MIKE VOELLER, Lee Newspapers; Montana Newspaper Association;
Montana Broadcasters {Tape: 1; Side: A; Approx. Time Count: 25.4}

TIM SHANKS, Montana Police Protective Association
{Tape: 1; Side: A; Approx. Time Count: 26.1}

EXHIBIT 3

JOHN CONNOR, Department of Justice; Montana County Attorneys'
Association {Tape: 1; Side: A; Approx. Time Count: 29.0}

JIM OBERHOFER, Montana Bureau of Crime Control
{Tape: 1; Side: B; Approx. Time Count: 3.1}

LAURENCE HUBBARD, State Fund
{Tape: 1; Side: B; Approx. Time Count: 4.2}

BECKY MALENSEK
{Tape: 1; Side: B; Approx. Time Count: 4.9}

EXHIBIT 4

MARY CRAGLE, Department of Corrections
{Tape: 1; Side: B; Approx. Time Count: 7.4}

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Count: 8.8-Tape 2; Side A; 3.1}

Closing by Sponsor: SEN. FRANKLIN

{Tape: 2; Side: A; Approx. Time Count: 3.2}

HEARING ON SB 263

Opening Statement by Sponsor: SEN. AL BISHOP

{Tape: 2; Side: A; Approx. Time Count: 5.3}

Proponents' Testimony:

KRISTEN JURAS, Montana Bar, Legislative Committee

EXHIBIT 5

{Tape: 2; Side: A; Approx. Time Count: 6.5}

SHERRY MEADOR, Supreme Court Assessment Program

{Tape: 2; Side: A; Approx. Time Count: 9.9; Comments: This proponent spoke to section 2 of the bill.}

BOB PYFER, Montana Credit Unions' League

{Tape: 2; Side: A; Approx. Time Count: 10.5; Comments: This proponent spoke to sections 3, 4, and 5 of the bill.}

DAVID DENNIS, General Counsel, D.A. Davidson Company

{Tape: 2; Side: A; Approx. Time Count: 14.0; Comments: This proponent spoke to section 7 of the bill.}

JOHN CADBY, Montana Bankers' Association

{Tape: 2; Side: A; Approx. Time Count: 18.8; Comments: This proponent did not sign in.}

Questions From Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Count: 19.4-Tape 2; Side B; 15.6}

Closing by Sponsor: SEN. BISHOP

{Tape: 2; Side: B; Approx. Time Count: 15.7}

HEARING ON SB 201

Opening Statement by Sponsor: SEN. WILLIAM GLASER

EXHIBIT 6

{Tape: 2; Side: B; Approx. Time Count: 16.9; Comments: The sponsor requested that the press not use the name of the victim referred to.}

Proponents' Testimony:

REP. DEB KOTTEL

{Tape: 2; Side: B; Approx. Time Count: 27.3}

EXECUTIVE ACTION ON SB 219

Motion: REP. WYATT moved SB 219 BE CONCURRED IN.

{Tape: 1; Side: A; Approx. Time Count: 2.5; Comments: This set of minutes is recorded on 60-minute tapes.}

Motion: REP. CURTISS moved to amend SB 219 on page 1, line 24 and page 2, line 29 to strike "an official capacity" and insert "the course and scope of employment."

{Tape: 1; Side: A; Approx. Time Count: 3.7}

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 4.9}

Vote: The motion carried 17 - 0. REPS. AHNER, HANSON and GRIMES were absent for the vote and did not leave proxy votes.

{Tape: 1; Side: A; Approx. Time Count: 7.2}

Motion: REP. BOHARSKI moved SB 219 BE CONCURRED IN AS AMENDED.

{Tape: 1; Side: A; Approx. Time Count: 7.5}

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 7.6}

Motion/Vote: REP. BOHARSKI moved to table SB 219. The motion failed by voice vote.

{Tape: 1; Side: A; Approx. Time Count: 17.1}

Vote: The motion to concur in SB 219 as amended carried 15 - 3; REPS. MC GEE, BOHARSKI and CLARK voting no. REPS. AHNER and HANSON were absent for the vote and did not leave proxy votes. REP. HURDLE will carry SB 219.

EXECUTIVE ACTION ON SB 201

Motion/Vote: REP. KOTTEL moved SB 201 BE CONCURRED IN.

The motion carried 13-6. REPS. SANDS, ELLINGSON, SOFT, HURDLE, BOHARSKI and SMITH voting no. REP. HANSON voted aye by proxy. REP. AHNER was absent for the vote.

EXHIBIT 1

{Tape: 1; Side: A; Approx. Time Count: 19.6 - 24.7; Comments: (REP. SMITH changed her original vote from yes to no without objection from the committee and expressed her reasons for the change.)}

EXECUTIVE ACTION ON SB 178

Motion: REP. WYATT moved SB 178 BE CONCURRED IN.

{Tape: 1; Side: A; Approx. Time Count: 26.0}



Montana Police Protective Assn.
To Serve and Protect
Since 1930

EXHIBIT 2
DATE 3/20/97
SB 219

March 10, 1997

*Representative Diana Wyatt
House Judiciary Committee*

Representative Wyatt,

On 3/20/97 your committee will be hearing SB 219. Senate bill 219 has been called the "Peeping Tom" bill. On 2/19/97 this bill passed the Senate on third reading 34/16. This is a good piece of legislation that is needed in Montana.

I am a Sergeant on the Great Falls Police Department and found a need for this type of legislation when I was faced with investigating peeping tom activity and not having a specific statute to charge.

I had the opportunity to met a young lady by the name of Katie LaRoe. Katie was a victim of such an individual. As a result of Katie and her mother Becky Malensek HB 200 was created. Senate bill 219 and HB 200 have been combined into one bill.

I hope you and your committee will support SB 219. I will be testifying in front of your committee on 3/20/97. I will provide the committee with written testimony as to the research I did regarding peeping tom statutes in surrounding states.

PLEASE SUPPORT SB 219. THANK YOU

TIM SHANKS

*LEGISLATIVE CHAIRMAN
MONTANA POLICE PROTECTIVE ASSOCIATION
Great Falls Police Department*



Montana Police Protective Assn.
To Serve and Protect
Since 1930

EXHIBIT 3
DATE 3/20/97
SB 219

March 20th 1997

*House Judiciary Committee
Rep Bob Clark
Chairman*

Representative Clark and members of the committee,

My name is Tim Shanks and I represent the Montana Police Protective Association. The MPPA supports SB 219 because there is a need for this type of legislation.

I am a Sergeant on the Great Falls Police Department and found a need for this type of legislation when I was faced with investigating peeping tom activity and not having a specific statute to charge.

I requested assistance from the Cascade County Attorneys' office in researching statutes that may apply. Criminal trespass to property does not meet the statutory intent. The property has to be posted or the property owner has to tell the person to leave the property. At best disorderly conduct can be used.

I began to research peeping tom statutes in January of 1996 with the assistance of the Attorney General's office and the Board of Crime Control. Additionally I contacted individuals in surrounding states and nationwide. Many states have some form of peeping tom statutes or city ordinances' making this activity a crime. Some states call it voyeurism.

I received information from several states including California, Arizona, Utah, South Dakota, Oklahoma, Delaware, Georgia, Indiana, Louisiana, Mississippi, Ohio and South Carolina. Unfortunately some states never returned my inquiries. I did contact some states and found they did not have a statute dealing with peeping toms'. Oregon, North Dakota, Washington to name a few.

Not all peeping toms are detected but this legislation would apply to those who are detected, caught and arrested. Peeping tom's can be a progressive stage too more serious crimes such as fondling, rape or much worse.

I am aware of an individual who has been a peeping tom for about three years. This person started out by using a bicycle to go from house to house then a car. When the individual was apprehended it was learned 40-50 houses were "visited" per week. Some houses multiple times.

This type of activity can not be tolerated by citizens in your community nor mine. This legislation would provide the necessary tools to assist law enforcement when a peeping tom is caught.

During the time I was researching peeping tom statutes I had the pleasure of meeting a young woman by the name of Katie LaRoe. Katie and I talked about her ordeal and the frustration she encountered because the person who violated her could not be charged as a peeping tom. I next met Katie's mother Becky. She too has been victimized. This committee can stop individuals like Katie and Becky from being victims of this type of activity.

Look at the definitions of SURREPTITIOUS: secretive, stealthy, acting in secret, stealthy way. STEALTH: a way of taking action designed to escape notice.

Please protect your family, my family and the citizens of the State of Montana from becoming victims of a peeping tom. Please VOTE FOR A DO PASS. SUPPORT SB 219.

Thank you,

*Tim Shanks
Legislative Chairman
MONTANA POLICE PROTECTIVE ASSOCIATION
Great Falls Police Department*

SB 219
March 19, 1997

EXHIBIT 4
DATE 3/20/97
SB 219

Bob Clark Chairman, House Judiciary and Members of the Committee

A 'peeping tom' to some, is a joke. Unless it happens to you, it is hard to understand how it affects you for a lifetime. It is my belief and my personal experience that a 'peeping tom' is only the beginning of dangerous.

While some 'peeping toms' are considered 'harmless' many others are not. My testimony may be the extreme. In 1980, I called the police because someone was peeping in my windows. The police found him under a car in front of my apartment. It was someone I knew. He told the police he was watching someone molest my daughter, who was three years old. The police told him to go away as he had no past criminal record. I tried to press charges that he could be dangerous. My question was "is he intending to molest my daughter?" My attorney said I couldn't do anything based on suspicion.

One month later this man was arrested for sexually assaulting an eight-year-old girl. He was sentenced to prison to 40 years as a dangerous offender and released after 13 years. I kept track of this person and discovered he never took a sex offender course in prison, he simply ran out his time. I also discovered he had sexually assaulted a total of eight children, girls and boys. Only the one child's mother prosecuted.

Every day since his release (2 ½ years ago) I watch the streets, close my shades and never leave my doors unlocked because he knows who I am. I am thankful that my children are grown and gone.

Had he been charged as a peeping tom during my ordeal, would it have changed that little eight-year-old life? He's out now, and he has a history. Will he change somebody else's children or adult life in the same heinous way?

Thank you for accepting my testimony. I urge you to make it a crime to be a peeping tom in hopes that if there is a link between peeping toms and rapists (as in my case) perhaps an intervention can be initiated before others end up a target for a rapist.

Sincerely,



Becky Malensek
2655 Valley Dr
E. Helena MT 59635

SENATE BILL NO. 219

INTRODUCED BY FRANKLIN, AHNER, RYAN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE CRIMINAL OFFENSE OF SURREPTITIOUS VISUAL OBSERVATION OR RECORDATION IN A PLACE OF RESIDENCE; PROVIDING AN EXCEPTION FOR LEGITIMATE INVESTIGATIVE PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Surreptitious visual observation or recordation IN A PLACE OF RESIDENCE -- EXCEPTIONS. (1) A person commits the offense of surreptitious visual observation or recordation if a person purposely or knowingly:

~~(a)~~ hides, waits, or otherwise loiters in the vicinity of a private dwelling house, apartment, or other place of residence for the purpose of:

(A) watching, gazing at, or looking upon any occupant in the residence in a surreptitious manner; or

(b) by means of an electronic or mechanical recording device, surreptitiously ~~records~~ **RECORDING** the visual image of ~~a person in a public or private place in which the recorded person has a reasonable expectation of privacy~~ **ANY OCCUPANT IN THE RESIDENCE.**

(2) SUBSECTION (1) DOES NOT APPLY TO A LAW ENFORCEMENT OFFICER, AN AGENT OR EMPLOYEE OF AN INSURER, OR A PRIVATE INVESTIGATOR LICENSED PURSUANT TO 37-60-301 OR TO ANY PERSON ENGAGED IN FRAUD DETECTION, PREVENTION, OR PROSECUTION PURSUANT TO 2-15-2015 OR 39-71-211, WHILE THE OFFICER, AGENT, EMPLOYEE, OR PRIVATE INVESTIGATOR IS ACTING IN AN OFFICIAL CAPACITY THE COURSE AND SCOPE OF EMPLOYMENT FOR LEGITIMATE INVESTIGATIVE PURPOSES.

~~(2)(3)~~ A person convicted of the offense of surreptitious visual observation or recordation shall be fined an amount not to exceed \$500 or be incarcerated in the county jail for a term not to exceed 6 months, or both. Upon a second conviction, a person shall be fined an amount not to exceed \$1,000 or be incarcerated for a term not to exceed 1 year, or both. Upon a third or subsequent conviction, a person shall be fined an amount not to exceed \$10,000 or be incarcerated for a term not to exceed 5 years, or

1 both.

2
3 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an
4 integral part of Title 45, chapter 8 5, part 2, and the provisions of Title 45 apply to [section 1].

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6 NEW SECTION. SECTION 3. COORDINATION INSTRUCTION. IF BOTH [THIS ACT] AND HOUSE
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8 CRIMINALIZING THE SURREPTITIOUS TAKING OF A PERSON'S PICTURE IN CERTAIN ROOMS IN A
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10 CODIFIED TOGETHER IN TITLE 45, CHAPTER 5, AND THE COMBINED SECTION MUST READ:

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14 A PERSON PURPOSELY OR KNOWINGLY HIDES, WAITS, OR OTHERWISE LOITERS IN THE VICINITY OF
15 A PRIVATE DWELLING HOUSE, APARTMENT, OR OTHER PLACE OF RESIDENCE FOR THE PURPOSE OF:

16 (A) WATCHING, GAZING AT, OR LOOKING UPON ANY OCCUPANT IN THE RESIDENCE IN A
17 SURREPTITIOUS MANNER; OR

18 (B) BY MEANS OF AN ELECTRONIC OR MECHANICAL RECORDING DEVICE, SURREPTITIOUSLY
19 RECORDING THE VISUAL IMAGE OF ANY OCCUPANT IN THE RESIDENCE.

20 (2) AN OWNER, MANAGER, OR EMPLOYEE OF A BUSINESS OR A LANDLORD WHO KNOWINGLY
21 SURREPTITIOUSLY RECORDS A VISUAL IMAGE OF A PERSON IN A RESTROOM, WASHROOM, SHOWER,
22 BEDROOM, FITTING ROOM, OR OTHER ROOM USED BY A CUSTOMER, GUEST, TENANT, OR MEMBER
23 OF THE PUBLIC TO, WITH A REASONABLE EXPECTATION OF PRIVACY, CHANGE OR TRY ON CLOTHES,
24 BATHE, PERFORM INTIMATE BODILY FUNCTIONS, OR APPEAR NUDE OR PARTIALLY NUDE OR IN
25 UNDERCLOTHES COMMITS THE OFFENSE OF SURREPTITIOUS VISUAL RECORDATION IN A PUBLIC
26 ESTABLISHMENT.

27 (3) SUBSECTIONS (1) AND (2) DO NOT APPLY TO A LAW ENFORCEMENT OFFICER, AN AGENT
28 OR EMPLOYEE OF AN INSURER, OR A PRIVATE INVESTIGATOR LICENSED PURSUANT TO 37-60-301 OR
29 TO ANY PERSON ENGAGED IN FRAUD DETECTION, PREVENTION, OR PROSECUTION PURSUANT TO
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2 INVESTIGATIVE PURPOSES.

3 (4) (A) A PERSON CONVICTED OF THE OFFENSE OF SURREPTITIOUS VISUAL OBSERVATION OR
4 RECORDATION IN A PLACE OF RESIDENCE SHALL BE FINED AN AMOUNT NOT TO EXCEED \$500 OR BE
5 INCARCERATED IN THE COUNTY JAIL FOR A TERM NOT TO EXCEED 6 MONTHS, OR BOTH. UPON A
6 SECOND CONVICTION, A PERSON SHALL BE FINED AN AMOUNT NOT TO EXCEED \$1,000 OR BE
7 INCARCERATED FOR A TERM NOT TO EXCEED 1 YEAR, OR BOTH. UPON A THIRD OR SUBSEQUENT
8 CONVICTION, A PERSON SHALL BE FINED AN AMOUNT NOT TO EXCEED \$10,000 OR BE
9 INCARCERATED FOR A TERM NOT TO EXCEED 5 YEARS, OR BOTH.

10 (B) A PERSON CONVICTED OF THE OFFENSE OF SURREPTITIOUS VISUAL RECORDATION IN A
11 PUBLIC ESTABLISHMENT SHALL BE FINED AN AMOUNT NOT TO EXCEED \$1,000 OR INCARCERATED
12 FOR A TERM NOT TO EXCEED 6 MONTHS, OR BOTH, IF THE VICTIM WAS AN ADULT AND SHALL BE
13 FINED AN AMOUNT NOT TO EXCEED \$5,000 OR INCARCERATED FOR A TERM NOT TO EXCEED 2
14 YEARS, OR BOTH, IF THE VICTIM WAS A MINOR.

15
16 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

17 -END-